



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

Claimant

MISS K COUCHMAN

AND

Respondent

SELECT GAMING LIMITED

ON: 24 September 2019

APPEARANCES:

For the Claimant: In Person

For the Respondent: Mr S Joshi, Solicitor

JUDGMENT

The Judgment of the Employment Tribunal is that: -

1. by agreement it is declared that the Respondent unlawfully deducted the sum of **£349.94 net** from the Claimant's wages, and the Respondent is ordered to repay that sum to the Claimant forthwith.
2. The unfair dismissal complaint was not well founded and was dismissed.

REASONS

1. Written reasons are provided in this case pursuant to a request in writing by the Claimant sent by email on 25 September 2019 after the Judgment

and Reasons had been announced on 24 September 2019. The reasons are set out only to the extent that the Tribunal considers it necessary to do so in order for the parties to understand why they have won or lost. Further, they are set out only to the extent that it is proportionate to do so.

2. All findings of facts were reached on the balance of probabilities.
3. By a claim form which was presented on 22 January 2019 the Claimant brought claims of unfair dismissal and unlawful deduction of wages. The Respondent conceded at the outset of the preliminary hearing that the unlawful deduction of wages claim was well founded. By agreement the Tribunal therefore declared that the sum of **£349.94** net had been unlawfully deducted from the Claimant's wages and ordered the Respondent to repay that sum to the Claimant forthwith.
4. The remaining complaint alleged unfair dismissal.

Evidence and Documents Adduced

5. On behalf of the Respondent an agreed bundle was produced which ran to some hundred pages and which contained the entirety of the documents which were used during the hearing. It was marked [R1]. In addition, as the fact of the dismissal was not disputed, the Respondent gave evidence first. They called three witnesses, namely Ms Sue Debenham, Head of Human Resources; Mr John Oversby-Powell, Director of the Respondent, and Mr Allan Plowman, the Company Accountant from September 2016 and the Claimant's first line-manager. Their witness statements were marked respectively [R2-R4].
6. The Claimant also gave her evidence in chief by way of a witness statement which was marked [C1].
7. Finally, in closing Mr Joshi relied on written submissions on behalf of the Respondent [R5]. In those submissions he set out the applicable legal principles and case law. There was no challenge to the statement by the Claimant and as the statement appeared to me to be accurate, I adopted it as set out in paragraphs 1 – 10 of [R5].

Issues, Facts found and Conclusions

8. The Respondent carries on business as an independent supplier of gaming and amusement equipment to licensed premises.
9. The Claimant worked for the Respondent from 3 May 2012 to 28 September 2018 as an Assistant Accountant. On her own account, between 2015 and the Summer of 2018 she was in a personal relationship with one of the Directors of the Respondent, Andrew Powell.

- After a period of time away from the workplace from early June 2018, she returned to work on 8 August 2018.
10. The Respondent contended that she had been dismissed at the end of September 2018 by reason of redundancy under section 139(1)(b), which flowed from a re-organisation.
 11. As a matter of law, dismissal by reason of redundancy is a potentially fair reason under section 98 of the Employment Rights Act 1996.
 12. The issue in this case was essentially whether the selection of the Claimant was genuine. The Claimant believed that it was a consequence of the break-up of her relationship with Mr Powell. She also contended that there was an alternative job which she could have done.
 13. The Respondent contended also that the decisions relating to the re-organisation were genuinely made and unconnected with the ending of the relationship. They also argued that they had followed the necessary procedures in order to have dismissed the Claimant fairly.
 14. The Claimant was one of two people carrying out a similar role who reported to Mr Plowman the Company Accountant. The Tribunal accepted Mr Plowman's evidence that the work was very similar, although each carried out some different tasks. They also shared responsibility for certain general administrative tasks.
 15. The Claimant worked from 10am to 2pm.
 16. The Tribunal was satisfied on the balance of probabilities that there was a genuine redundancy situation. The evidence about the commercial position of the Respondent supported this. The Tribunal found the following:
 - a. The Respondent first proposed potential redundancies in May 2018, following the loss of a major brewery contract which was to take effect in October 2018. This affected a number of staff, and led to some voluntary redundancies, a freeze on recruitment in some departments, and a restriction on replacements elsewhere.
 - b. The Finance Assistant with whom the Claimant worked was put at risk of redundancy [C1, para 17].
 - c. Having reviewed the effect of the lack of business and the reduction in client contracts, the Respondent concluded that there was no longer a business requirement to have two assistant roles reporting to the Company Accountant on a day to day basis from August 2018.
 - d. The Respondent reached the reasonable view that the work could be done by one Bookkeeper with additional administrative

responsibilities was required to oversee the day-to-day activities of the business's accountancy function.

- e. Both Accountancy support roles within the Finance department (the Claimant's and Ms Upshall's) were put at risk of redundancy in August 2018; both were invited to apply for the new role, the Claimant was subsequently encouraged to apply, and in the event, both postholders were made redundant.
- f. In the same redundancy exercise, the Respondent made thirteen other members of staff redundant in 5 departments: Production, Service Collections, Operations, Administration and Accounts, and Sales and Marketing.
- g. In the amalgamated role, the Respondent required the post holder to attend from 8am to 5pm, for genuine reasons related to the needs of the business, and which had not been adequately met to date.

17. As long as the Tribunal is satisfied that there was a genuine redundancy situation it is not for the Tribunal to determine how the Respondent decides to address that situation. I was satisfied that it was as a result of that redundancy situation that they took the decision to reduce costs in the accounts department. It is also correct that the redundancies which were made affected a number of other areas of the Respondent as well.
18. The Tribunal rejected the Claimant's contention that she applied for the bookkeeper role. It was not consistent with the contemporaneous documentary evidence. Further her account of having applied for the job was not persuasive: [C1, para 35]. Moreover, she did not appeal against the decision to dismiss.
19. There was a dispute about a further vacancy which had arisen at the Respondent's Aylesford depot.
20. The Tribunal noted that Mr A Powell with whom the Claimant had recently broken up, was based there. Her account of the breakup and the reasons for it painted a picture of some considerable difficulties for her. Further her sickness absence from June to August 2018 had been anxiety and stress which she reported to have been caused by her treatment at Mr Powell's hands.
21. It was not disputed that the vacancy was for a temporary administrative post for 4 weeks. The Tribunal did not consider that it constituted a suitable alternative post for the Claimant.
22. In relation to the procedure followed, the Tribunal found that the Respondent invited the Claimant to 3 meetings between 10 August and 21 August 2018 to be informed of being at risk and then for consultation [pp37, 40 and 41]. This satisfied the requirements of reasonable notification and consultation with the employee.

23. The Claimant did not dispute the documentary evidence produced which indicated that there had been approximately a dozen or so redundancies during the course of 2018 through to the beginning of 2019. The Respondent employed about one hundred people, so this represented a substantial reduction in headcount which was consistent with their evidence about the Company's business needs.
24. In terms of an appropriate pool for selection, warning and consultation and a fair basis of selecting from those in the pool and also consideration of suitable alternative employment, it appeared to me that the general picture of there being a meeting in which the Claimant was told that she was at risk was consistent with accepted employment practice.
25. There were notes made of the two consultation meetings on 15 August and 21 August. The Claimant was sent the minutes by 23 August, after she requested them. She was also sent a couple of letters after the meetings which summarised what had been discussed.
26. Opening up the new post for competition between the two at risk members of staff was also a reasonable method of selection. It was likely that the Claimant was not interested in performing that role, given the more basic nature overall of the tasks to be done by the bookkeeper, compared to her Accounts Assistant role.
27. In addition, the Tribunal had the notes of the meetings which chronicled responses from the Claimant which the Respondent reasonably interpreted as indicating that she was not interested in the role at that stage, i.e., up to 22 August 2018.
28. It did not appear to me therefore that there were, indeed, suitable alternatives. The position of the book-keeper was subsequently filled by someone for one day and then the person left. This occurred after the expiry of the Claimant's notice. Then subsequently somebody else internally was recruited and they took up that position in December 2018. Although there were other premises, only the depot in which the Claimant worked in around Maidstone was an appropriate place to suggest as the other depot was in Staffordshire.
29. After the Claimant was notified that the decision had been made that her current post was redundant, she was given the opportunity of working for a bit longer and then there was going to be a payment in lieu of notice. She was told that she could appeal against the decision but she did not make an appeal.
30. In all the circumstances, it did not appear to me that the Respondent had acted unfairly. It appeared to me that all the decisions that they made in terms of who should be selected for being put at risk of redundancy and

then the process that they followed were genuine decisions which fell within the band of reasonable responses of an employer. I also had regard to the size of the business and its administrative resources.

31. In all the circumstances, I found that the unfair dismissal complaint was not well founded and was dismissed.

Employment Judge Hyde

Dated: 19 December 2019

Public access to Employment Tribunal Judgments

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.